

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2016-376-C

In re:)
)
Petition of)
Network Communications International)
Corporation for Initiation of a Rulemaking)
Regarding Inmate Telephone Rate Caps,)
Provider Assessed Ancillary Fees and)
Single-Payment Products)

OPPOSITION OF GLOBAL TEL*LINK CORPORATION

Pursuant to Order No. 2016-788 issued by the Public Service Commission of South Carolina (“Commission”),¹ Global Tel*Link Corporation (“GTL”),² respectfully submits this Opposition to the Petition of Network Communications International Corporation (“NCIC”) for Initiation of a Rulemaking Regarding Inmate Telephone Rate Caps, Provider Assessed Ancillary Fees and Single-Payment Products, which was filed in the above-referenced docket on November 1, 2016 (“Petition”). Consideration of the status of the regulation of inmate calling services (“ICS”) at the federal level is important in determining whether the Commission should initiate the rulemaking requested by NCIC. GTL urges the Commission to deny the Petition in light of pending proceedings at the Federal Communications Commission (“FCC”) and in the federal courts.

¹ On November 9, 2016, the Commission issued Order No. 2016-788, which stated that interested parties could file comments by November 21, 2016.

² This filing is made by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

In November 2015, the FCC adopted an order establishing interstate and intrastate rate caps for ICS calls and associated ancillary fees.³ Numerous parties appealed the *FCC 2015 ICS Order* to the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”),⁴ and some of those parties also asked the D.C. Circuit to stay implementation of the FCC’s rules pending the D.C. Circuit’s full review of the decision on the merits.⁵ The National Association of Regulatory Utility Commissioners (or “NARUC”), of which the Commission is a member, also asked the D.C. Circuit to vacate the FCC’s 2015 decision on the basis that the FCC has no authority over intrastate inmate calling rates.⁶ By contrast, the petitioner here, Network Communications International Corp. (“NCIC”), intervened in the D.C. Circuit appeal *in support of* the FCC’s decision to preempt this Commission from regulating intrastate ICS.⁷ NCIC’s Petition to have this Commission initiate a new rulemaking proceeding for intrastate ICS is directly contrary to its support of preemption in the D.C. Circuit.

³ *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015) (“*FCC 2015 ICS Order*”).

⁴ *See, e.g.*, No. 15-1461, *Global Tel*Link Corporation v. FCC*, Petition for Review (D.C. Cir. filed Dec. 18, 2015) (and consolidated cases Nos. 15-1498, 16-1012, 16-1029, 16-1038, 16-1046, and 16-1057). In addition, petitions for review also were filed by Securus Technologies, CenturyLink, Telmate, the National Association of Regulatory Utility Commissioners, Pay Tel Communications, and the State of Oklahoma. A request to intervene (*i.e.*, participate in the case) in support of the state of Oklahoma also has been filed by the states of Wisconsin, Nevada, Arkansas, Arizona, Louisiana, Missouri, Kansas, and Indiana. All appeals have been consolidated under the lead case of No. 15-1461.

⁵ *See, e.g.*, No. 15-1461, *Global Tel*Link Corporation v. FCC*, Motion of Global Tel*Link for Partial Stay Pending Judicial Review (D.C. Cir. filed Jan. 27, 2016). In addition, motions to stay implementation of the FCC’s rules were filed by Securus Technologies, CenturyLink, Telmate, and the State of Oklahoma.

⁶ No. 16-1038, *National Association of Regulatory Utility Commissioners v. FCC*, Petition for Review, at 2 (D.C. Cir. filed Feb. 5, 2016); *see also id.* at 6 (indicating that “NARUC represents those government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the telecommunications within their respective borders”).

⁷ No. 15-1461, *Global Tel*Link Corporation v. FCC*, Motion of Network Communications International Corp. for Leave to File *Amicus Curiae* Brief in Support of Respondents and Opposing Motions for Stay (D.C. Cir. filed Feb. 12, 2016).

On March 7, 2016 and again on March 23, 2016, the D.C. Circuit stayed implementation of the new rate caps as applied to interstate and intrastate ICS calls.⁸ The court, however, allowed the FCC's new ancillary fee caps and certain other rate restructuring requirements to take effect for both interstate and intrastate ICS. As a result, the FCC's ancillary fee rules currently apply to all ICS providers in South Carolina, which eliminates the need for any rulemaking on the issue of ancillary fees as requested in the Petition unless those rules are vacated on appeal.

While the appeal of the *FCC 2015 ICS Order* was pending, the FCC issued an Order on Reconsideration further modifying its rate caps for ICS calls, and applying those new rate caps to both interstate and intrastate ICS.⁹ Numerous parties (including NARUC) once again appealed to the D.C. Circuit,¹⁰ and also asked the court to stay application of the new rate caps pending a full review of the FCC's order on the merits.¹¹ On November 2, 2016, the D.C. Circuit stayed the *FCC 2016 ICS Reconsideration Order* and held the substantive appeal of the decision in abeyance pending the outcome of the court's review of the *FCC 2015 ICS Order*.¹² With respect to the appeal of the FCC's 2015 decision, final briefs have been filed, but oral argument has not been scheduled.

⁸ No. 15-1461, *Global Tel*Link Corporation v. FCC*, Order (D.C. Cir. Mar. 7, 2016), Order (D.C. Cir. Mar. 23, 2016).

⁹ *Rates for Interstate Inmate Calling Services*, 31 FCC Rcd 9300 (2016) ("*FCC 2016 ICS Reconsideration Order*").

¹⁰ See, e.g., No. 16-1321, *Securus Technologies, Inc. v. FCC*, Petition for Review (D.C. Cir. filed Sept. 13, 2016); No. 16-1322, *Global Tel*Link Corporation v. FCC*, Petition for Review (D.C. Cir. filed Sept. 13, 2016); No. 16-1339, *State of Oklahoma, NARUC, et al. v. FCC*, Petition for Review (D.C. Cir. filed Oct. 3, 2016). Petitions for Review also were filed by ICS providers Telmate, Pay Tel, and CenturyLink.

¹¹ See, e.g., No. 16-1321, *Securus Technologies, Inc. v. FCC*, Securus Technologies, Inc. Emergency Motion for Partial Stay of FCC Order 16-102 Pending Review (D.C. Cir. filed Sept. 27, 2016); Motion of Telmate, LLC for Stay Pending Judicial Review (D.C. Cir. filed Sept. 27, 2016); Motion of Global Tel*Link for Partial Stay Pending Judicial Review (D.C. Cir. filed Sept. 28, 2016); State and Local Government Petitioners' Motion for Stay Pending Review (D.C. Cir. filed Oct. 4, 2016).

¹² No. 16-1321, *Securus Technologies, Inc. v. FCC*, Order (D.C. Cir. Nov. 2, 2016).

To the extent the *FCC 2015 ICS Order* is upheld, the Commission’s jurisdiction to regulate ICS rates will be preempted. Further, any changes to the FCC’s ICS rules or their applicability to intrastate ICS arising from action by the D.C. Circuit will affect the outcome of the requested rulemaking proceeding. While the Petition references other state proceedings regarding ICS, the Petition neglects to mention that those proceedings were started prior to the issuance of the FCC’s decisions and have been held in abeyance pending the outcome of the D.C. Circuit appeal¹³ or were initiated to modify *existing* state rate caps in light of the portions of the FCC’s decision that were permitted to take effect.¹⁴ No state commission has initiated an entirely new rulemaking proceeding to address ICS issues, and doing so at this time would be an inefficient use of public and private resources.¹⁵

¹³ For example, the Massachusetts and Alabama commissions both adopted rate caps for intrastate ICS *prior* to the issuance of the FCC’s 2015 and 2016 decisions, and have stayed any further action in their ICS proceedings pending the outcome of the D.C. Circuit appeals. See Mass. D.T.C. Docket No. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Interlocutory Order (June 14, 2016); Ala. P.S.C. Docket 15957, *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Transcript from March 8, 2016 monthly agenda meeting (Mar. 8, 2016).

¹⁴ Georgia, Louisiana, and North Carolina adopted rate caps for intrastate ICS *prior* to the issuance of the FCC’s 2015 and 2016 decisions. After the FCC’s action, proceedings were necessary to bring those state rate caps into compliance with the new FCC requirement that the rates for ICS calls cannot be based on per-call, per-connection, or flat-rate call charges. See Ga. P.S.C. Docket No. 18870, *Institutional Telecommunications Services*, Order Setting Briefing Schedule and Admitting Evidence (Nov. 10, 2016); La. P.S.C. Docket R-32777, *Rulemaking to Establish Rules and Regulations Specific to the Regulation of Prison Telephone Communication Systems*, General Order (April 20, 2016); N.C.U.C. Docket No. SC-1427, Sub 9, *Request by Securus Technologies, Inc., for Waiver of Rule R13-9(d) of the Rules and Regulations of the North Carolina Utilities Commission*, Order Requesting Comments (Sept. 8, 2016).

¹⁵ See, e.g., Order No. 2006-515, Order Denying Motion for Summary Disposition, Denying Motion to Dismiss and Granting Motion to Hold Proceeding in Abeyance (Sept. 13, 2006) (“The Commission finds that holding this matter in abeyance pending the FCC’s action serves administrative and judicial economy. . . a ruling by the FCC on Time Warner’s petitions will have a direct impact on the proceedings in this matter.”); Order No. 2004-452, Order Approving Petitions for Funding from State USF (Sept. 28, 2004) (holding proceeding in abeyance “in the interest of the administration of justice and administrative efficiency”); Order No. 95-658, Order Addressing Marketing Practices and Marketing Guidelines (Mar. 20, 1995) (“we hereby hold in abeyance any decision until the final FCC rules are determined”).

Accordingly, GTL respectfully requests that the Commission deny the Petition and take no further action at this time.

Dated this 21st day of November, 2016.

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